

**AMENDMENT NUMBER 6**  
**to**  
**CONTRACT DIR-SDD-503**  
**between**  
**the State of Texas, acting by and through the Department of Information Resources**  
**and**  
**Sun Microsystems, Inc.**

This Amendment Number 6 to Contract DIR-SDD-503 ("Contract") is between the State of Texas, acting by and through the Department of Information Resources ("DIR") and Sun Microsystems, Inc., ("Vendor"). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. **Contract, Section 2, Term of Contract**, is hereby amended as follows:

The term of this Contract is hereby extended through March 14, 2009, completing one of the three (3) optional one-year terms. Prior to March 14, 2009, DIR and Vendor may extend the Contract, upon mutual agreement, for up to two (2) more optional one-year terms.

2. **Contract, Section 5, DIR Administrative Fee, Paragraph A**, is hereby restated in its entirety as follows:

A. Beginning on the Effective Date of Amendment No. 6, the administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is one and a quarter percent (1.25%). Notwithstanding anything to the contrary in Paragraph B, there will be no corresponding adjustments to discounts. The terms of Paragraph B shall apply to all future changes in the administrative fee. Payment will be calculated for all sales, net of returns and credits. Prior to the Effective Date of Amendment No. 6, the administrative fee for all sales shall remain at one percent (1.00%). During Option Year 1 (from March 14, 2008 through March 14, 2009), Sun agrees to total sales of ten million dollars (\$10,000,000) (the "Annual Commitment"). If it is determined during preparation of the final monthly report of an annual Contract term that Vendor has not met its Annual Commitment, Vendor will owe DIR the difference between the actual administrative fee it has paid and \$125,000 and Vendor will pay the additional funds in a check to DIR to meet the \$125,000 total. Should this Contract expire or terminate prior to the end of any given annual Contract term, the Annual Commitment due for the Contract term shall be prorated based on the actual number of days of the term. In the event total Customer sales under this Contract reach \$13,000,000 within any given annual Contract term, the administrative fee to be paid by the Vendor shall be decreased to three quarters of one percent (.75%) for the remainder of that annual Contract term.

3. **Contract, Section 6, Notification**, is hereby amended to include the following:

If sent to the Vendor:

Mary Ferguson  
Sun Microsystems  
500 Eldorado Boulevard  
Building 1-200  
Broomfield, CO 80021  
Phone and Fax: 303-558-3192

E-mail: mary.ferguson@sun.com

4. **Contract, Section 9, Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts**, is hereby amended to include the following:

10. All references to Catalog Information System Vendors (CISV) in Appendix A are hereby deleted.
11. All references to Texas Building and Procurement Commission (TBPC) are hereby revised and replaced with Texas Comptroller of Public Accounts (CPA).

5. **Appendix A, Section 3, Definitions, Subsection A. Customer**, is hereby restated in its entirety as follows:

**A. Customer** - any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code and, except for telecommunications services under Chapter 2170, Texas Government Code, assistance organizations as defined in Section 2175.001, Texas Government Code to mean:

- 1) A non-profit organization that provides educational, health or human services or assistance to homeless individuals;
- 2) A nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;
- 3) Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance Office of the Agency for International Development;
- 4) A group, including a faith-based group, that enters into a financial or non-financial agreement with a health or human services agency to provide services to that agency's clients;
- 5) A local workforce development board created under Section 2308.253;
- 6) A nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters;
- 7) The Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation's successor entity under Section 74.1011, Texas Agriculture Code;
- 8) A nonprofit computer bank that solicits, stores, refurbishes and redistributes used computer equipment to public school students and their families; and
- 9) A nonprofit organization that provides affordable housing.

6. **Appendix A, Section 8, Contract Administration, 19. Reporting and Administrative Fees, 2) Detailed Monthly Report**, is hereby restated in its entirety as follows:

**2) Detailed Monthly Report**

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under the Contract for the

previous month period. Reports shall be submitted to the DIR Go DIRECT E-Mail Box at [GoDirect.Sales@dir.state.tx.us](mailto:GoDirect.Sales@dir.state.tx.us). Reports are due on the fifteenth (15<sup>th</sup>) calendar day after the close of the previous month period. It is the responsibility of Vendor to collect and compile all sales under the Contract from participating Order Fulfillers and submit one (1) monthly report. The monthly report shall include, per transaction: the detailed sales for the period, the Order Fulfller's company name, if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, and other information as required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to the Vendor for correction in accordance with this section.

7. **Appendix A, Section 8, Contract Administration, 22. Contract Administrative Notification**, is hereby restated in its entirety as follows:

- 1) Upon execution of the Contract, Vendor shall provide DIR with written notification of the following: i) Vendor Contract Administrator name and contact information, ii) Vendor sales representative name and contact information, and iii) name and contact information of Vendor personnel responsible for submitting reports and payment of administrative fees specified herein.
- 2) Upon execution of the Contract, DIR shall provide Vendor with written notification of the following: i) DIR Contract Administrator name and contact information, and ii) DIR Go DIRECT E-Mail Box information

8. **Appendix A, Section 9, Vendor Responsibilities, Subsection A. Indemnification**, is hereby restated in its entirety as follows:

**Indemnification**

**1) INDEPENDENT CONTRACTOR**

VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER, DIR OR THE STATE OF TEXAS.

**2) Acts or Omissions**

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES ("INDEMNIFIED PARTIES") FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any negligent acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. VENDOR SHALL PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS. To the extent permitted by Texas state law, the Indemnified Parties agree to be responsible for their own acts, errors or omissions pertaining to this indemnification provision.

### **3) Infringements**

- a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights ("IP Claim") in connection with the Products or Services sold BY VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. Vendor will be liable for the following, to the extent they are attributable exclusively to such claim:
  - i) costs and attorneys' fees for defense of the claim; and ii) damages awarded by the court finally determining the case, provided that Customer gives the Vendor control of the defense and settlement of the IP Claim, except that THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS. THE STATE AGENCY OR CUSTOMER, AS APPROPRIATE SHALL: (i) provide to the Vendor, at the expense of the Vendor, all available information; and (ii) Vendor agrees not to settle an IP Claim without first receiving the concurrence of the Office of the Attorney General when Vendor is defending an IP Claim for a state agency.
- b) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing, (iii) if neither (i) nor (ii) is reasonably achievable, remove such provided products and/or services and refund to the Customer the original price paid therefore less net benefits realized by the Customer through accumulated depreciation or expensing thereof, up until the date of removal.
- c) Notwithstanding anything to the contrary, Sections a and b do not apply to, and Vendor has no obligation or liability of any kind for, any IP Claim arising from: (i) compliance by the Vendor with the designs or specifications of Customer; (ii) modification of such provided products and/or services that are not specifically authorized by a future written authorization signed by a Vice President of the Vendor; (iii) use of an allegedly infringing version of such provided products and/or services, if the alleged infringement could have been avoided by the use of a different version made available to Customer; (iv) combination comprising such provided products and/or services in combination with any third party services, hardware, software, data, or other materials; (v) violation of the Vendor's license grant; or (vi) any separate or component hardware, software or other materials to the extent it comprises any third party open source or freeware technology, or any derivatives or other adaptations thereof, and any combination that includes any of the foregoing.
- d. This Section states the entire liability of Vendor and the exclusive remedies of Customer for any proceedings or claims that any product or service infringes or misappropriates a third party's intellectual property.

### **4) PROPERTY DAMAGE**

IN THE EVENT OF LOSS, DAMAGE, OR DESTRUCTION OF ANY TANGIBLE PROPERTY OF CUSTOMER OR THE STATE DUE TO THE NEGLIGENCE, MISCONDUCT, WRONGFUL ACT OR OMISSION ON THE PART OF THE VENDOR, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS, THE VENDOR SHALL PAY THE FULL COST OF EITHER REPAIR, RECONSTRUCTION, OR REPLACEMENT OF THE PROPERTY, AS MUTUALLY AGREED TO BY THE PARTIES. SUCH COST SHALL BE DETERMINED BY THE PARTIES AND SHALL BE DUE AND PAYABLE BY THE VENDOR NINETY (90) CALENDAR DAYS AFTER THE DATE OF THE VENDOR'S RECEIPT FROM THE CUSTOMER OF A WRITTEN NOTICE OF THE AGREED-UPON AMOUNT THAT IS DUE.

9. **Appendix A, Section 9, Vendor Responsibilities, 23. Vendor Certifications**, is hereby restated in its entirety as follows:

Vendor certifies that it and its designated Order Fulfillers: (i) have not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract, (ii) are not currently delinquent in the payment of any franchise tax owed the State of Texas and are not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate, (iii) neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage, (iv) have not received payment from DIR or any of its employees for participating in the preparation of the Contract, (v) under Section 2155.004, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate, (vi) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract, (vii) are not suspended or debarred from doing business with the federal government as listed in the *Excluded Parties List System (EPLS)* maintained by the General Services Administration, and (viii) as of the effective date of the Contract, are not listed in the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control; and (ix) under Section 2155.006, Government Code, Vendor certifies that the individual or business entity in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate. In addition, Vendor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract.

10. **Appendix A, Section 9, Vendor Responsibilities, new Subsection M. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE**, is hereby added as follows:

1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. VENDOR AGREES AND ACKNOWLEDGES THAT VENDOR ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS SHALL NOT BE ENTITLED TO ANY STATE BENEFIT OR BENEFIT OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR EXPECTATIONS OF BENEFITS BY VENDOR, ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES, PROVIDED THAT THE INDEMNIFIED PARTIES: (I) GIVE THE VENDOR CONTROL OF THE DEFENSE AND SETTLEMENT OF THE ANY CLAIMS, EXCEPT THAT THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS. (II) PROVIDE TO THE VENDOR, AT THE EXPENSE OF THE VENDOR, ALL AVAILABLE INFORMATION; (III) DO NOT COMPROMISE OR SETTLE THE CLAIM. Vendor agrees to not settle a claim without first receiving the concurrence of the Office of the Attorney General when defending a state agency.

**11. Appendix A, Section 10, Contract Enforcement, Subsection B. Termination, 2. Absolute Right,** is hereby restated in its entirety as follows:

**2) Absolute Right**

DIR shall have the absolute right to terminate the Contract without recourse in the event that: i) Vendor becomes listed on the prohibited vendors list authorized by Executive Order #13224, *"Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"*, published by the United States Department of the Treasury, Office of Foreign Assets Control; ii) Vendor becomes suspended or debarred from doing business with the federal government as listed in the *Excluded Parties List System (EPLS)* maintained by the General Services Administration; or (iii) Vendor is found by DIR to be ineligible to hold this Contract

under Subsection (b) of Section 2155.006, Texas Government Code. Vendor shall be provided written notice in accordance with Section 11.A, Notices, of intent to terminate.

12. All other terms and conditions of the Contract, not specifically modified herein, shall remain in full force and effect. In the event of conflict among the provisions, the order of precedence shall be Amendment Number 6, then Amendment Number 5, then Amendment Number 4, then Amendment 3, then Amendment Number 2, then Amendment Number 1 and then the Contract.

**IN WITNESS WHEREOF**, the parties hereby execute this amendment to be effective as of August 31, 2008.

**Sun Microsystems, Inc.**

**The State of Texas, acting by and through the  
Department of Information Resources**

**By:** signature on file

**By:** signature on file

**Name:** Randy Russell

**Name:** Cindy Reed

**Title:** Relationship Manager

**Title:** Deputy Executive Director  
Operations & Statewide Technology Sourcing

**Date:** 9/2/08

**Date:** 9/3/08

**Legal:** signature on file